

Housing Infrastructure Financing Program
ARTICLE 20:09
(proposed Administrative Rules of South Dakota numbered: 20:09:26:01 to
20:09:26:22, inclusive)
HOUSING DEVELOPMENT AUTHORITY

To: Chas Olson & Beverly Katz, South Dakota Housing Development Authority (SDHDA)

From: Lori J. Moen, Chief Operating Officer, Grow South Dakota,
605-698-7654 ext 127; lorim@growsd.org

Thank you for the opportunity to provide comments regarding the Housing Infrastructure Plan. Below are a few of my comments for your consideration, I am available at any time to discuss further or provide clarification.

Infrastructure – Comments – Lori Moen, Grow SD 5-23-2023

1. Page 3; 20:09:26:01 **Definitions**
 - a. I would encourage including SDHDA's definition of Single Family.
 - i. *Single-Family Project: A project consisting of individual single-family dwellings or a project with one or more buildings containing four or less units per building.* (South Dakota Housing Opportunity Definition)
 - b. Page 4: #7 - "Political subdivision," any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, local government entity, or agency of the state of South Dakota that is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law
 - i. It would be beneficial to have clarity regarding how tribal governments/communities would be considered an eligible political subdivision.
2. Page 5; 20:09:26:02 **Eligibility**
 - a. (1) Be an entity, tribal government, housing authority, local economic development corporation, or political subdivision of the state of South Dakota or agency of that political subdivision.
 - i. I would encourage clarification or defining "entity" as well as specifically include Nonprofits as an eligible "entity" in this segment.
3. Page 8; 20:09:26:06 **Criteria**
 - a. (12) The availability of adequate water supply and water treatment facilities to support the public infrastructure; and
 - i. I would encourage including language regarding the availability of adequate wastewater/sewage treatment facilities.
 1. Perhaps the intent was that wastewater/sewage would fall under (13) of this section – "other relevant factors". By adding wastewater/sewage to the same line as water supply or in a separate line will ensure communities are addressing key factors necessary in the development.

4. Page 9; 20:09:26:08 **Restrictions**
 - a. An award of housing infrastructure program funding is subject to the limitations set forth in SDCL 11-15-3 to 11-15-5, inclusive
 - i. The loan and grant in the statutes are separate line items, it could be considered that a community with a population below 50,000 could actually obtain 2/3 of the funding, 1/3 loan and 1/3 grant. SDHDA may want to clarify a "combined" amount not to exceed 1/3 of the total project if that is the intent.

5. Page 11; 20:09:26:11 **Funding limitations**
 - a. I would encourage SDHDA to have one uniform amount for eligible housing units. This will allow for any variances on rental/ownership that may come into future sales/development.
 - i. Solution: Limit all eligible housing unit funding to a uniform cost of up to \$25,000/eligible housing unit regardless of rental/home ownership and/or population.
 1. A compromise to this solution would be to allow up to \$20,000/eligible housing unit.
 - ii. Solution: Remove the requirement of a per-unit basis and base the allocation on the combined 1/3 of total project costs. Lot/street sizes and costs will vary with each community.

 - b. It appears there is no maximum allocation amount for a project, nor is there a maximum allocation amount for any one community. Without clarity, one community may be eligible for the majority if not all of the funding within its community size.

Thank you, again, for this opportunity to submit comments. I am grateful for the housing support of the state and have faith in the integrity of South Dakota Housing Development Authority to administer the program to meet the intended purpose of the program.

Sincerely,



Lori J. Moen
Chief Operating Officer
Grow South Dakota
104 Ash St. E.
Sisseton, SD 57262
605-698-7654 ext 127



May 25, 2023

Chas Olson
3060 E Elizabeth Street
Pierre, SD 57501

Dear Chas:

I write today in reference to the 2nd set of proposed guidelines on the Housing Infrastructure Financing Program Allocation Plan Draft on behalf of the Economic Development Professionals Association of South Dakota (EDPA). Following a thorough review of the Draft the EDPA has the concerns/questions listed below. On behalf of our membership across the State of SD I am asking you to review and address our comments.

1. Amend to proposed rule 20:09:26:02: A for-profit entity may not apply for housing infrastructure program funding unless the application includes a resolution of support from the applicable tribal government or political subdivision of the state of South Dakota as provided in 20:09:26:09.
 - a. Reasoning; admittedly, the additional language is redundant in that 20:09:26:02 specifically states that an applicant must “submit with the application a resolution of the applicable political subdivision ...” But prohibiting for-profit entities from directly applying for funding is unnecessary if the true goal of the prohibition is to ensure that the project complies with the political subdivision’s engineering standards and specifications.
2. Eliminate the requirement for a market study demonstrating the need for the proposed housing infrastructure project.
 - a. Reasoning; this requirement will delay community participation in the program, delay projects from starting in a timely manner and adds cost to the project. Furthermore, there is extremely limited options on a consultant who can perform a proper market study in a timely and cost-effective manner.

The EDPA does thank you for the efforts put forth from the first set of proposed rules versus this set. Many of the questions we had asked previously were answered and we are grateful to all involved. Thank you for your consideration and please let me know of any questions.

Kindly,

Michael L Bockorny
Chairman of the Board
EDPA of SD

From: [Chas Olson](#)
To: [Beverly Katz](#)
Subject: FW: [EXT] Housing Infrastructure Funding--comments before hearing
Date: Thursday, May 25, 2023 1:32:25 PM
Attachments: [image002.png](#)

Chas Olson, Interim Executive Director
South Dakota Housing Development Authority
PO Box 1237 :: 3060 E. Elizabeth St. :: Pierre, SD 57501
Phone: 605-773-4132 :: Fax: 605-773-5154
Chas@sdhda.org :: www.sdhda.org



From: johnson2@abe.midco.net <johnson2@abe.midco.net>
Sent: Wednesday, May 24, 2023 11:46 AM
To: Chas Olson <chas@sdhda.org>; beverly@sdhda.com; johnson2@abe.midco.net
Subject: [EXT] Housing Infrastructure Funding--comments before hearing

Greetings! Thank you for allowing us to share a few questions and observations with you before the public hearing next week.

Please accept these as a variety of the questions I have been getting from my many clients on this issue, including some that just seek clarification. We appreciate all of the work of you and your agency, and strive only to continually improve this major investment.

I'll go through the draft rules in order and add a few items at the end. I will only refer to the subsection numbers for the purposes of simplicity.

1) **"Political Subdivision"--Section 01(07)**--"Any association"--What do we think that means? Can it include rural water systems, which also includes an assortment of nonprofit entities?

2) **Eligibility--Section 02(01)**--"An entity"--I just want to be sure this phrase includes nonprofit corporations. I believe that is your intent, but I am just checking, as there are an assortment of nonprofits who are the housing developers across the state, particularly in the rural areas.

3) **Eligibility**--Section 02 last paragraph--The provision about for profit entities not being eligible to apply, etc. Is it my understanding that this will be removed from consideration? If so, there are several other questions that I will not ask at this point. If not, there are other questions that need clarification.

4) **Eligibility**--Section 02--tribal entities--We have to find a way to make them eligible, as they may not fit under all of the other political subdivision assumptions of

the draft rules. Various tribal entities are the groups who are doing housing development in many areas of the state.

5) **Complete application**--Section 05--Can preliminary engineering be submitted and the application be considered complete?

6) **Criteria**--Section 06 (1)--"Market Study"--What will the authority accept in terms of a market study? As you know, this is a very expensive, time consuming process if entities are expected to use a certain entity to do the study. Clarity on what will be accepted will be very helpful.

7) **Criteria**--Section 06 (11)--"Input by local governing bodies and stakeholders"--What is intended by this phrase?

8) **Approval**--Section 09--The word "approval" seems to be a big word in this context. Is there another way to illustrate that the political subdivision has the capacity, willing to maintain or own, etc., and satisfies the local requirements? In communities where there may be more than one applicant, this could be politically very tricky.

9) **Funding Limitations**--Where did these funding amounts come from? Is there a way to waive or alter them based on certain parts of the state where infrastructure costs may be more expensive than in others?

10) **Use of Proceeds**--Section 12 (03)--Perhaps there is punctuation or a word missing from this sentence. "Preliminary design state costs for market research" does not make sense.

11) **Use of Proceeds**--Section 12 (03)--"Preliminary design stage costs"--if this is what we think it is, can preliminary engineering expenses be included in project costs?

12) **Total Project Cost**--Section 13--There seems to be various interpretations of the rules among various folks who have tried to interpret them. Clarify for us please. Total project cost includes only land for the infrastructure. Right? It seems it is not always 100% consistent when referred to in the draft rules.

13) **Applications for ARPA Funding**--Section 14--Help us understand. Do the applicants make the decision to apply for ARPA dollars and/or general funds? Or is that decision made at your office? Clearly we understand the extra requirements under ARPA.

14) **Modification of terms**--Section 16--Thank you for including this provision!

15) **Interest Rate**--Section 17--What are we contemplating at this point for the interest rate on initial loans?

16) **Time**--Section 18--Thank you for including the extension of time in the draft rules. Depending on when the program launches, there may be many months under which there will not be construction, particularly if we have another long winter like this last year.

17) **Waiver**--Section 22--Thank you for including this provision. it it may be very

helpful, especially as we launch this major program.

Interpretations of the legislation:

18) **Public Infrastructure**--Under SB 41, Section 8 (3)--Road is included. Can it include the paving of a road? I have to believe that it could be included.

19) **Public Infrastructure**--SB 41, Section 8 (3)--Can demolition be included under "excavation and compaction? For some areas, this will be a cost-effective use of the infrastructure funds, as there is some infrastructure in some areas but needs to be updated. Demolition can be expensive.

20) **Public Infrastructure**--SB 41, Section 8 (3)--Can electrical lines be included, especially where a municipal utility is concerned, knowing that "street lights" are specifically included?

I intend to be present for the public hearing, and look forward to that opportunity.

If these do not make sense, please feel free to reach out to me. My cell will be on all weekend: 605 280-3642.

Respectfully submitted,

Julie M. Johnson
Attorney at Law and Registered Lobbyist
for several housing groups



PO BOX 1218
Pierre, SD 57501
605.224.2761
sdhbvp@sdhomebuilders.com
www.sdhomebuilders.com

May 25, 2023

Board of Commissioners
South Dakota Housing Development Authority
P.O. Box 1237
Pierre, SD 57501-5876

Re: Housing Infrastructure Financing Program
Proposed Administrative Rules

Dear Commissioners:

This letter is in response to the Board's notice of public hearing to consider the adoption of the proposed Administrative Rules of South Dakota numbered: §§ 20:09:26:01 to 20:09:26:22, inclusive.

The South Dakota Home Builders Association represents persons engaged in the home building industry throughout South Dakota. Since the first meeting of the 2021 Interim Study Committee on Workforce Housing Needs in South Dakota, SDHBA has been directly involved in the legislative debates and lobbying efforts that resulted in the passage of SB 41. Adoption of administrative rules implementing the provisions of SB 41 is the final step in this three-year-long journey, and we appreciate this opportunity to express our views on the Board's proposed rules.

SDHBA generally supports the proposed rules except the following provision in § 20:09:26:02:

A for-profit entity may not submit an application for housing infrastructure program funding. An eligible applicant may collaborate with or contract with a for-profit entity to develop a housing infrastructure project. Any for-profit entity may serve as a guarantor for any housing infrastructure program funding.

Nothing in the legislative history of SDCL Chapter 11-15 indicates that the legislature intended to prohibit for-profit entities from applying for or receiving housing infrastructure program funding. Neither HB 1033 nor SB 41 prohibits for-profit entities from applying for funding or specifies that only political subdivisions and nonprofit entities may apply for funding. If the legislature had intended that a for-profit entity be ineligible for housing infrastructure program funding, these bills would have included that restriction.

Requiring a for-profit developer to collaborate with a nonprofit organization will increase costs without adding any substantial value to the project. Presumably, the nonprofit organization will charge the developer an administrative fee for submitting the application, disbursing the funds, and monitoring construction of the project. And there will be additional legal fees for drafting and reviewing contracts between the developer and the nonprofit organization, especially if the nonprofit requires the developer to guaranty the project and the loan. The proposed rule will make the development process less efficient and more costly.

Also, requiring a for-profit developer to collaborate with a nonprofit organization may delay or prevent the construction of an infrastructure project, particularly in areas where there are few, if any, nonprofit organizations willing and able to engage in this type of activity. Generally, a nonprofit organization may not engage in a trade or business that is not substantially related to its exempt purpose. Very few nonprofits are organized for the purpose of facilitating the financing and construction of housing infrastructure. And very few nonprofits have the expertise necessary to undertake an infrastructure project. Consequently, opportunities for developers to collaborate with nonprofit organizations on projects will be limited.

The goal of the housing infrastructure fund is to increase the availability and affordability of workforce housing throughout South Dakota. Prohibiting for-profit entities from applying directly for program funding does not further this goal. The proposed rule creates an unnecessary obstacle for private sector developers, which will increase costs and, in some instances, delay or prevent the construction of infrastructure projects. This certainly is not what the legislature had in mind when it created the Housing Infrastructure Financing Program.

For these reasons, we respectfully request that you not adopt the proposed rule, and that you include for-profit entities among the organizations that are eligible to apply for housing infrastructure program funding.

Thank you for your consideration. We appreciate your service on the Board and your efforts to provide opportunities for quality, affordable housing for South Dakotans.

Sincerely,

Jack Petersen

Jack Petersen
SDHBA President

From: [Penfield, Logan](#)
To: [Beverly Katz](#)
Cc: [Eckhoff, Jeff](#); [Smith, Kevin](#)
Subject: [EXT] Comments on Proposed Housing Infrastructure Fund
Date: Thursday, May 25, 2023 4:42:48 PM
Attachments: [image001.png](#)

South Dakota Housing Development Authority Board of Commissioners:
Re: Proposed Rules for the Housing Infrastructure Fund

The first comment by the Housing Division within the City of Sioux Falls is in regards to “Chapter 20:09:26:11. Funding Limitations.” We request that communities with a population exceeding fifty thousand be increased to (at least) \$25,000 per single family lot, equal to the funding limitation for single family lots in communities of fifty thousand or fewer population., we believe that municipalities larger than fifty thousand should have a significantly higher cap on a per lot basis due to current acquisition costs for developable tier-one, single-family land.

The second comment on the proposed rules is in regards to the funding allocation allotment for the communities above fifty thousand in population. The funding designated for municipalities with a population larger than fifty thousand should be divided evenly between the two municipalities and not be first-come-first-serve basis. This would allow large municipalities to properly evaluate the projects while knowing that they aren’t losing out on potential investments.

Lastly, we would submit the following question for the Commissioners to consider. How will the interest rate for the loans be calculated – knowing that it will need to be lower than market rate and it will need to entice developers to go through the extensive application process?

Thank you for your work on this program. We look forward to working with the South Dakota Housing Development Authority to make it a success.

Thank you,

Logan Penfield
Housing Development Manager
City of Sioux Falls
lpnfield@siouxfalls.org
(605) 228-6972





605.343.1744
PO Box 747
Rapid City, SD 57709
elevaterapidcity.com

May 26, 2023

South Dakota Housing Development Authority
Board of Commissioners
3060 E. Elizabeth St
Pierre, SD 57501

Dear Commissioners,

Thank you for all the work you and the staff of the South Dakota Housing Development Authority have done to get the Housing Infrastructure Finance Program to this stage. Additionally, we at Elevate Rapid City appreciate the opportunity to provide comments on the proposed administrative rules for the program.

Respectfully, we have three comments, and two questions.

Comment 1. Section 20:09:26:11 sets out limitations on funding to limit communities with a population of greater than 50,000 to \$15,000 per lot; it is no less expensive to develop lots in these larger cities than it is to develop in the smaller cities, so respectfully, we ask for parity on the award per lot to match communities with populations less than 50,000. We would suggest then that 20:09:26:11 simply has two limitations. (1) Up to ten thousand dollars per multifamily rental housing unit; and (2) Up to twenty-five thousand dollars per single family lot.

Comment 2. The previously released allocation plan had divided the 30% of the funding dedicated to cities with populations greater than 50,000 into three portions that would set aside amounts for each of the two larger cities with a third portion allocated on a first come, first served basis. In this new set of rules, no such split exists, and will leave the two largest cities vying for the entire 30%. It would be beneficial to instead dedicate an equal share of this 30% to each of the cities with populations over 50,000 in order to prevent this money grab, and instead allow for strategic development of necessary housing to better serve the needs of the community.

Comment 3. Because it is likely that municipalities will be the primary applicant across the state, and they can often bond through DANR's Clean Water and Drinking Water plans at 3% or less, the standard interest rate on these loans should be set in line with DANR's water rates in order to be more competitive for use. We understand that by necessity, the rate is not explicitly identified in the administrative rules, but if possible, reference to other similar rates would be advantageous to encourage use of this program.

Question 1. Is the word nonprofit missing before the word entity in 20:09:26:02(1), otherwise, what is the definition of entity in this clause?

Question 2. How complete must plans and specs be for submission, and what must be included - just the infrastructure on the project, or the housing component as well?

Again, thank you for the opportunity; we look forward to putting these funds to use to provide housing that will elevate the Rapid City region for all.

Sincerely,

A handwritten signature in blue ink that reads "Laura E. Jones".

Laura Jones

Housing & Community Development Manager
Elevate Rapid City

**CHEYENNE RIVER HOUSING AUTHORITY
COMMENTS ON
PROPOSED RULES FOR
SOUTH DAKOTA HOUSING INFRASTRUCTURE PROGRAM**

RE: Proposed Administrative Rules of South Dakota numbered: §§ 20:09:26:01 to 20:09:26:22, inclusive. Regarding guidelines, criteria, and processes for the application, approval, and disbursement of loans and grants provided through the South Dakota housing infrastructure fund under SDCL Chapter 11-15.

The Cheyenne River Housing Authority is the tribally designated housing entity administering federal and State funds to provide and support the majority of affordable rental housing on the Cheyenne River Reservation. We appreciate this opportunity to submit comments to the South Dakota Housing Development Authority Board of Commissioners on this important new law.

First, we appreciate the explicit inclusion of tribal governments in §20:09:26:02 as eligible applicants for this program. This is particularly appropriate as Tribes have long be eligible to participate in other SDHDA funding programs and have formed many strong partnerships that have resulted in significant new development of affordable housing throughout the state. At Cheyenne River we have used these state-tribal partnerships to implement multiple affordable housing developments. Participation in this new infrastructure program would be an important elevation of future affordable housing development. Cheyenne River Housing Authority had submitted an application for this new infrastructure program and was very disappointed to find out it could not participate this year.

We are concerned with the proposed rules which allow Tribes to apply for funding for developing infrastructure, but also includes the requirement that the Tribes must convey the infrastructure over to a political subdivision of the State of South Dakota. This creates a barrier for Tribes who are currently developing and/or managing infrastructure because in the majority of cases, Tribes or tribally created entities provide and maintain infrastructure on their reservations. It is often that case that a tribal entity is also providing the infrastructure for all residents, both tribal and non-tribal, on a reservation. For example, the **Mni Wašté Water Company** is a tribally chartered entity and serves 14,000 members within the Dewey, Ziebach, Western Meade and Southeastern Perkins Counties and is located on the Cheyenne River Reservation in South Dakota. For more see, <https://mniwaste.com/>

We understand that the SDHDA's intention was for this infrastructure financing program to be available to fund infrastructure projects in tribal jurisdictions. Unfortunately, proposed rule §20:09:26:01(7) defines "political subdivision" as:

Any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, local government entity, or agency of the state of South Dakota that is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law. (emphasis added)

This definition excludes tribal governments, which are independent sovereigns under centuries of tribal and federal law (not state law) vested with their own sovereign powers, including self-governance. The exclusion of tribes from the definition of “political subdivision” essentially creates an unintended obstacle for tribal projects developing infrastructure because proposed § 20:09:26:01(8) defines “public infrastructure” as defined in SDCL 11-15-1 as:

*A right of way, water distribution system, sanitary sewer system, storm sewer system, lift station, street, road, bridge, curb, gutter, sidewalk, traffic signal, or streetlight, **which is or will be owned, maintained, or provided by a political subdivision of this state**; or excavation, compaction, or acquisition of land for such purposes. (emphasis added)*

We are disappointed that the majority of potential tribal applicants will not be able to participate in this year’s Housing Infrastructure Financing Program. As you know, there is a critical need for housing infrastructure in South Dakota’s reservation communities, and the Program could have significant impact in these communities. We hope to work with SDHDA and the State legislature to correct these problems during the next legislative session.



101 S. REID STREET SUITE 201
SIOUX FALLS, SD 57103
TEL: 605.323.2820
FAX: 605.323.2824

LloydCompanies.com

IMPROVING QUALITY OF LIFE

(Via email at beverly@sdhda.org)

South Dakota Housing Development Authority Board of Commissioners
3060 E. Elizabeth St., PO Box 1237
Pierre, SD 57501-5876

Dear Board of Directors,

Lloyd Companies has been a developer of housing in South Dakota for over 50 years. We have developed housing across the entire housing spectrum, single family homes, affordable apartment complexes, workforce housing, student housing, and luxury apartments and condos.

Our vision statement is "Improving Quality of Life", and we firmly believe that safe, comfortable, and affordable housing is a key component to the people of South Dakota's quality of life. Demand, inflation, and more recently interest rates have made it harder and harder for people to find safe, comfortable, and affordable housing. This shortage of housing exacerbates the much talked about shortage of employees as many people willing to relocate to various communities in South Dakota find it impossible to find housing.

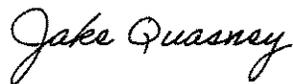
This is why we supported the creation of the Housing Infrastructure Financing Program when it was first proposed during the 2022 legislative session. We were hopeful that the program could help stem the tide of rising costs and rising interest rates to help us continue to build housing across South Dakota. While we deeply believe in improving the quality of life through housing, we also understand that doing so is only possible if the projects are economically feasible. When costs are going up and interest rates are rising it seriously corrodes the ability to complete the projects without programs like the Housing Infrastructure Financing Program.

We believe that the structures laid out in the legislation would enable the continued expansion of workforce housing in South Dakota. It also creates a path for the future with the creation of a sustainable fund that will enhance investment opportunities in rural communities which are always the hardest hit by cost increases and carry the greatest risk for investors.

We, however, have concerns with the limitations in Section 20:09:26:02. We appreciate working with local governments, economic development groups, and others with our projects but do not understand how limiting for-profit entities from using the program would work in practice and spur housing development. As one example, the criteria in 20:09:26:06(8) considers "the *applicant's* control of the site of the housing infrastructure project and the readiness of the applicant to proceed with construction." Emphasis added. In most projects, we as the developer, and not the local government, buy the property and complete the project construction, including without limitation, the infrastructure. Only after the project is complete is the related infrastructure dedicated to the applicable governmental entity. The non-profit applicant would not be able to comply with the criteria of controlling the site. We work with the local governments on all our projects in obtaining building permits, meeting with city planners, determining the desirability of the project, and otherwise. The resolution of support from the applicable political subdivision, as required in 20:09:26:09, is a prudent step fulfilling many of the same goals as 20:09:26:02.

We are supportive of underwriting standards that protect the people of South Dakota's investment while not discouraging the investment necessary to create a successful housing project. We also are supportive of a structure that does so creating the least amount of bureaucratic burdens between the fund and the project.

Sincerely,



Jacob Quasney
Chief Operating Officer
Lloyd Companies



May 26, 2023

South Dakota Housing Development Authority
Board of Commissioners
3060 E. Elizabeth Street
Pierre, SD 57501-5876
Sent by e-mail to beverly@sdhda.org

Re: Response to Public Notice for the Housing Infrastructure Financing Program on Proposed Administrative Rules of South Dakota Numbered: §§ 20:09:26:01 to 20:09:26:22, inclusive.

Dear Sir or Madam:

Please accept this comment letter on behalf of the South Dakota Native Homeownership Coalition in response to the South Dakota Housing Development Authority's (Authority's) Public Notice for the Housing Infrastructure Financing Program.

Overview of SDNHOC

Started in 2013, the South Dakota Native Homeownership Coalition is a collaborative group of key organizations dedicated to increasing homeownership opportunities for Native Americans in the State of South Dakota. Our mission is to increase homeownership opportunities for South Dakota's Native people to build strong and healthy communities.

We're a diverse group of public agencies and private institutions. Our stakeholders include approximately 75 representatives of South Dakota's tribes, federal and state agencies, tribally designated housing entities (TDHEs), nonprofit organizations, housing developers, residential construction professionals, lenders, and community development financial institutions (CDFIs).

The Coalition was born out of a need to expand homeownership opportunities for Native Americans in the State of South Dakota. Our Coalition works to increase Native homeownership rates by strategically leveraging knowledge and resources among stakeholders and other key

c/o Lakota Funds, P.O. Box 340, Kyle, South Dakota 57752 • (605) 455-2500

CREATING A CLEAR PATH TO HOMEOWNERSHIP

entities. Through these synergies, we aim to revitalize our communities by creating an environment that supports the dream of homeownership.

Our primary target market is each of the nine Indian reservations in South Dakota and includes tribal trust, allotted trust, and fee simple land. We also support homeownership efforts in Native communities near the reservations, including Rapid City.

We encourage the Authority to consider the following feedback about the Proposed Rule for the Housing Infrastructure Financing Program.

Comments

First, we appreciate the explicit inclusion of tribal governments in §20:09:26:02 as eligible applicants for this program. We know that the Authority’s intention was for this financing program to be available to fund infrastructure projects in tribal jurisdictions.

Unfortunately, proposed §20:09:26:01(7) defines “political subdivision” as:

*Any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, local government entity, or agency of the state of South Dakota that is created or appointed by statute, ordinance, or resolution and **is vested with the authority to exercise any sovereign power derived from state law.** (emphasis added)*

This definition excludes tribal governments, which are independent sovereigns under centuries of tribal and federal law (not state law) vested with their own sovereign powers, including self-governance.

The exclusion of tribes from the definition of “political subdivision” essentially creates an unintended obstacle for tribal projects developing infrastructure because proposed §20:09:26:01(8) defines “public infrastructure” as defined in SDCL 11-15-1 as:

*A right of way, water distribution system, sanitary sewer system, storm sewer system, lift station, street, road, bridge, curb, gutter, sidewalk, traffic signal, or streetlight, **which is or will be owned, maintained, or provided by a political subdivision of this state;** or excavation, compaction, or acquisition of land for such purposes. (emphasis added)*

Typically, there are no “political subdivisions of this state” on reservations in South Dakota to take on the responsibility of owning and maintaining the public infrastructure. Therefore, tribes are inherently precluded from applying for the Housing Infrastructure Financing program in most cases.

In situations where a “political subdivision of this state” is present on the reservation, the requirement for a tribal applicant to convey the infrastructure to a non-tribal political subdivision is problematic. If the eligible political subdivision of the state was even willing and able to own and operate the infrastructure, there are many issues that make these transactions difficult, including the following:

1. Public systems typically generate revenue through user fees. This may not be the case for tribally operated systems which may be supported through other funding mechanisms available only to tribes.
2. This requirement could create checker boarded infrastructure systems in which a political subdivision of the state could own the collection system while the tribe might own the treatment portion of a sanitary sewer system. This would not lead to efficient operations.
3. This scenario limits future funding sources that tribes use to maintain and improve infrastructure since the tribe would not own and operate the underlying infrastructure.

We are disappointed that the majority of potential tribal applicants will not be able to participate in the Housing Infrastructure Financing Program. As you know, there is a critical need for housing infrastructure in South Dakota’s reservation communities, and the program could have significant impact in these communities.

We recognize that legislative action is required to remedy this inadvertent exclusion of tribal applicants. Because steps are already underway to address this problem by the legislature, we request that you consider setting aside funds for qualified tribal applicants until the matter is resolved.

We appreciate the opportunity to provide these comments and look forward to continuing to collaborate with the Authority to expand housing infrastructure financing programs for all South Dakotans.

Sincerely,



Sharon Vogel
Board Chair
SD Native Homeownership Coalition

Beverly Katz

From: Joni Lingle
Sent: Monday, May 22, 2023 11:56 AM
To: Beverly Katz
Subject: FW: [INFO@SDHDA.ORG][EXT] Johnson Addition

From: Josh Nelson <josh@brookingshomes.com>
Sent: Monday, May 22, 2023 10:03 AM
To: Joni Lingle <joni@sdhda.org>
Subject: [INFO@SDHDA.ORG][EXT] Johnson Addition

Good morning, I am writing to you this morning in disappointment regarding the work and effort that is being put forth on my behalf. Ive been in discussions with Tobin Morris and ive been informed that you'll are making it very difficult to get a grant for the rural development areas. I currently have a project going in Arlington, SD and I have the landowner willing to back the project (estimate for road/curb & gutter) is in that 322K range. We would like to apply for a grant to help with this project but we don't want to involve the city as the applicant. (city or non-profit) was the last wordage I've heard in order to be the applicant. HOW CAN THAT BE! I have a land owner willing to back the project but in need of assistance. This needs to get resolved.

Josh Nelson

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O:605-692-9200 M:605-203-1560

josh@brookingshomes.com

www.nelsonrealtysd.com

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